

Statement of Joseph R. Webber
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Before the House Committee On Government Reform
Subcommittee on National Security, Emerging Threats and International Relations

Chairman Shays, Ranking Member Kucinich and distinguished members of the Committee, I thank you for the opportunity to be here today to discuss the Investigative Priorities of Immigration and Customs Enforcement also known as ICE. I retired from the agency as the Special Agent in Charge, Houston in September of last year, I still have a fondness for the agency, a pride in its mission and utmost respect for it's employees. It is indeed an honor to be here today, to be heard and hopefully in some small way to have an impact on the future of ICE.

With the reorganization of government and creation of the Department of Homeland Security (DHS), ICE was formed in March 2003. Legacy components from the U.S. Immigration Service and the U.S. Customs Service were brought together presumably for the purpose of pursuing investigations relating to violations with a nexus to our Immigration and Customs laws. From the onset the agency was embroiled in controversy.

Some of the difficulties encountered by ICE are not unique or without precedent. One only has to look to the private sector and observe the problems encountered in mergers or acquisitions. Many mergers in the private sector fail or productivity suffers as employees try to re-acclimate to the new work environment and new ways of doing business. Many employees focus on what the reorganization means to them personally and where they fit in the organization.

In addition to the normal stressors associated with a reorganization, ICE faced a significant budget shortfall and, in my opinion, a lack of direction. Consequently, there were no funds to offset the difficulties encountered with the reorganization. There were insufficient funds for such things as cross training, co-location of personnel, travel, fuel for vehicles and hiring. Unfortunately, some of the events reported in the media were true. Vehicles were parked, copy machines were picked up as the bills were not paid and there was a lack of accountability in virtually every administrative system. Special Agents in Charge received a stipend budget on a quarterly basis not knowing if additional funds would be received. Not only were there difficulties encountered in identifying investigative priorities, it was difficult to establish spending priorities due to budget uncertainties. In an ideal environment managers ensures that spending is appropriately matched to the agencies mission and priorities. We were struggling on both fronts.

As if these hurdles were not obstacles enough to overcome, the agency was continually bashed in the press. In order to establish its new identity, the agency attempted to change the name. Attempts to change the name of the organization were blocked by the Federal Bureau of Investigation (FBI) and as a result badges and credentials were not issued for over two years. Even the continued existence of the organization was questioned as DHS, Office of Inspector General (OIG) conducted a study which recommended that ICE be merged back into Customs

and Border Protection (CBP).

This may seem unimportant to some but when you are attempting to establish a new agency, a new identity, a new culture, it is of critical importance to convey to all employees the agency's mission, priorities and vision. Combined these stressors have taken their toll on ICE's most valued resource, the employees and their morale. As indicated earlier mergers and acquisitions are difficult to manage under the best of circumstances. Needless to say these were not the best of circumstances, however, despite the adversity ICE employees have done a remarkable job. Agents continue to pursue some of the most significant criminal organizations and perfect quality criminal cases. Let us not forget the administrative support staff who are often overlooked. They too have done a remarkable job under trying circumstances with antiquated administrative systems.

I believe this background is a necessary requisite before discussing Investigative Priorities. As from the inception ICE struggled has for it's very existence.

Investigative Priorities When Everything is a Priority, Nothing is a Priority

In Government Service, as in the public sector, there are never sufficient resources to address all issues, and, hence the need to prioritize. The investigative missions of INS and Customs can be very broad and when used correctly the combined authorities can be a significant tool in protecting the Homeland. Essentially anything or anyone that crosses the border, inbound or outbound, illegally can be the subject of investigation by ICE. Drugs, human trafficking, alien smuggling, money, weapons, high technology, noncompliant automobiles, counterfeit or trademarked violation merchandise. The list spans the entire spectrum of criminal activity. But where to put the resources?

When ICE was formed the exercise of addressing the organization's investigative priorities and tailoring them to the new department never took place. At the second Special Agent in Charge (SAC) Conference in Philadelphia several SAC's including me suggested that we dispense with the prepared agenda and address the most important issue of identifying the agency's mission and priorities. The agency was at a critical stage and there was a clear need to form the new identity and culture. The response from the Assistant, Secretary of ICE was "What do you need Joe, a PowerPoint (presentation)". Clearly the suggestion of carving out a mission statement and investigative priorities was not well received by the head of the agency and the discussion ended.

On several occasions when similar questions relating to priorities were asked, Headquarters' managers would respond "We haven't shut anything down" and once again the discussion would end. At yet another SAC conference the Deputy, Assistant Secretary was openly critical of legacy Customs managers by stating "You spend too much time on drug cases". When pressed for an answer as to what was the appropriate amount of time to invest in drug cases and equally important where to reinvest the resources, there were no answers. We were in a quagmire where rhetoric was supplied in response to our questions relating to the direction and priorities of the

new agency. Employee morale continued to suffer and as many studies have indicated job satisfaction is a critical motivator for Government employees.

Establishing investigative priorities in ICE should be a relatively easy process but it will call for tough decisions. Some programs may have to be scaled back and others shut down entirely but the focus must remain on the identification, disruption and dismantlement of the most significant criminal violators bringing illegal merchandise, contraband and people into our country. Further, emphasis must be added to any investigation that has the potential to cause harm to our citizens. Fortunately, ICE has an automated case management system. It is a relatively easy process to direct and monitor the use of investigative resources within ICE. Every agent enters their hours worked by case every month into the automated system. It is very easy to determine as an example how many hours were spent on alien smuggling cases last year or last month. Cases are also prioritized Class I, Class II, Class III. The case categories and prioritization needs to be reworked and any case with a nexus to our national security should be regarded as a Class I case. Everything else is should be regarded as Class II. No Class III cases should be opened. The information can be indexed and filed and should additional information be received that would warrant reclassification of the case it can be reopened. Managers at every level should be held accountable for insuring that the majority of their cases and case hours are at the Class I level.

There are many examples that can be cited where ICE investigative resources can be used in a more effective way. The efficiencies of the Office of Investigation could be improved by approximately 9% by immediately transferring functions that belong in other offices within ICE. One ICE component is the Office of Detention and Removal (DRO). As the title implies the primary mission of DRO is the detention and removal of illegal aliens from the United States. However, approximately 9% of ICE's investigative resources are involved in the process of identifying for removal illegal aliens already incarcerated in facilities throughout the country. This is an important function and it needs to continue, however, it is not an appropriate use of investigative resources. At an early executive conference the head of DRO publicly acknowledged that the institutional removal program belonged in DRO and that it was not an investigative function. He then related that he had developed a "ten year plan" to transfer the institutional removal program from the Office of Investigations into DRO where it belongs. It is clear that ICE's prioritization as to the appropriate use of it's resources is not limited to the Office of Investigations. It is time for "the thirty day plan" and this function needs to be transferred to DRO.

Jurisdictional Issues / Turf Battles

In addition to prioritizing case management ICE needs clear jurisdictional authority. From its inception ICE has encountered turf battles from within the Department and outside agencies.

The justification given for the separation of CBP and ICE is that CBP is responsible for the border and somehow ICE is responsible for "interior enforcement". There have been frequent references to the "interior enforcement strategy". I have not seen a copy of nor was I have I been briefed regarding the "interior enforcement strategy". Further, if individuals or merchandise do not cross the border illegally ICE does not have jurisdiction.

Efforts to address operational issues, that arose as a byproduct of the merger, between ICE and the Border Patrol and ICE and CBP Inspections involved the formation of working groups at the field level. Memorandums of Understanding (MOU's) have been negotiated by field level managers governing the interaction of the agencies within the same Department at the national level. Although there is some value in getting input from the field, policy decisions should be made at the Headquarters or Department level. Should the decision be made not to put the agencies back together, the Department needs to take a strong leadership role to ensure that there is no mission creep among the entities. Efforts need to be taken to ensure that the agencies communicate effectively, not duplicate efforts and stay within their mission (Patrol, Inspections, Investigations).

At about the time ICE was created the Drug Enforcement Administration (DEA) attempted to impose an overly restrictive MOU on ICE with regard to the conduct of drug investigations. The proposed MOU went far beyond coordination and communication and called for DEA to command and control ICE drug investigations. If it had been approved ICE would have jurisdiction over every commodity that crosses the border but one, drugs. Fortunately, this effort has seemed to die of its own weight but it is sure to resurface. ICE should be given clear jurisdictional authority to work drug cases and not have to periodically negotiate MOU's governing the investigation of any commodity crossing the border. To what extent that authority is used would be determined by the prioritization of investigations referenced above.

Shortly after ICE was established DHS and the Department of Justice (DOJ) entered into an MOU relating to the interaction of ICE and the FBI in conducting financial terrorism investigations. The legacy Customs component of ICE has extensive money laundering experience with many documented successes. In the aftermath of 9/11, ICE launched an initiative, Green Quest, targeting terrorist fund-raising. This is an excellent example of how ICE jurisdictional authorities can be turned to address national security issues. The MOU legislated Green Quest out of existence and requires that ICE coordinate it's investigations with the FBI and, further, the FBI has the prerogative to take control of an ICE case at any time. I would never suggest that ICE be allowed to unilaterally work terrorist fund-raising investigations without close coordination with the FBI. However, the MOU provides a disincentive for ICE to pursue terrorist fund-raising cases as illustrated by a recent Houston investigation. It cannot be over-emphasized the effect this MOU had upon morale of a new agency which had historically been recognized for its money laundering expertise.

In 2003 the Houston office initiated an investigation into a terrorist fund-raising organization. For a multitude of reasons I cannot discuss the case in great detail but I can say that in October 2004 the investigation progressed to the point where an affidavit in support of a wiretap application was sent to Main Justice. That affidavit referenced terrorism on forty-nine occasions, Osama Bin-Laden on three occasions and al-Qaida once. Although there was a consensus by all involved that there was sufficient probable cause to pursue an intercept, the affidavit sat stalled in Washington for one hundred and twenty-seven days. During this time period there were over 700 communications that would have been subject to interception had the affidavit moved forward in a timely fashion.

Although the FBI would later argue that ICE had not properly coordinated the investigation pursuant to the MOU this case was coordinated with the FBI from the beginning. There was close coordination, communication and interaction between ICE and the FBI in Houston and in 2003 the ICE case agent gave a briefing at FBI Headquarters. In addition there were several correspondence regarding the case that went from FBI Houston to FBI Headquarters and visa versa.

After several attempts to move the case forward I sent a letter to the Government Accounting Office (GAO), DHS, IG and DOJ, IG alleging that the investigation had been mishandled and our national security interests were being compromised. I received no response from the oversight agencies and two weeks later I sent a separate letter to Senator Charles Grassley's office.

At one point the story aired on Dateline and in response the FBI issued a press release indicating that all national security leads are vigorously pursued, and that the issue was nothing more than a difference in opinion on how to proceed with the investigation. During questioning by Senator Grassley at a Senate Judiciary Hearing, the FBI Director would later acknowledge that there had been delays and that there was a difference in recollection by FBI employees regarding the events.

Senator Grassley initiated an inquiry and ultimately requested a joint investigation by DHS, IG and DOJ, IG. I recently had the opportunity to read a draft of the DOJ, IG and DHS,IG report. I regret to inform the Committee that not only did the oversight agencies fail to engage when the matter was originally forwarded to them they have also failed to pursue the investigation to its logical conclusion and many leads have been left undeveloped.

Again I cannot discuss the report in detail for a number of reasons but I found one portion of the report quite disturbing. During the time period that the affidavit sat stalled in Washington the then Assistant Secretary for ICE and the then United States Attorney in Houston telephonically contacted the Deputy Attorney General requesting his assistance in moving the case forward. The Deputy Attorney General assigned his Chief of Staff to resolve the issue. After several additional telephone calls and additional delays the Chief of Staff held a conference call only involving DOJ officials and he elected to support the FBI position. When later interviewed by the IG's the Chief of Staff would relate that he viewed the matter as an operational issue and it was not his job to micro-manage the decision process. If Main Justice will not intervene in a terrorist fund-raising case after significant delays when will they intervene and who will manage the decision making process?

The report clearly indicates that there were significant delays in processing an affidavit in a terrorist fund-raising investigation and in many instances decisions were made unilaterally by the FBI with no input from ICE. I bring this matter to your attention for one reason. As long as the MOU remains in effect there will be a disincentive for ICE to pursue these types of investigations. If the logic is that ICE cannot pursue investigations with a national security nexus, how will ICE marry its priorities to the mission of DHS and protect the Homeland?

Conclusion

With approximately 5,600 Special Agents ICE is the second largest investigative agency in Government. It has broad jurisdictional authorities and a highly motivated workforce. If given additional resources, clear mission and priorities and a level playing field in dealing with other agencies, ICE can make a significant contribution to our national security.

I once again thank the Committee for allowing me to testify and will be glad to answer any questions.